

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 395 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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NAVGAN ALIAS AMIT ALIAS RAHUL PUNJABHAI TALAPADA (VAGHARI)

Versus

STATE OF GUJARAT

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Appearance:

MR ANIL S DAVE for Petitioner

MR BY MANKAD ADDL PUBLIC PROSECUTOR for Respondent No. 1

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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 23/09/1999

ORAL JUDGEMENT

#. The appellant accused has preferred this appeal against the judgment and order passed by the learned Additional Sessions Judge, Vadodara in Sessions Case No : 127 of 1998 dated 16th April, 1999. The appellant of the present appeal was original accused No.2 in the trial court and he has been held guilty of the offences punishable under Section 452, 393, 307, 332 and 135 of the Bombay Police Act. By the impugned judgment and

order, the learned Additional Sessions Judge has imposed substantive sentence under all these above offences with fine and in default to undergo certain punishments. The sentence imposed by the learned Sessions Judge upon the accused in brief as under;

Offence : (1) U/s. 452 of IPC

(2) U/s. 393 of IPC

(3) U/s. 307 of IPC

(4) U/s. 135 of B.P.Act.

Sentence :

(1) R.I. for 05 years and fine of Rs.100.00 i/d R.I.  
for 07 days.

(2) R.I. for 05 years and fine of Rs.500.00 i/d R.I.  
for 07 days.

(3) R.I. for 05 years and fine fine of 100.00 i/d.  
S.I. for 07 days.

(4) R.I. for 01 year and fine of Rs.100.00 i/d S.I.  
for 07 days.

#. Initially the learned counsel Ms.Banna Datta argued the matter at length and has tried to submit that the appellant accused should be acquitted as there is no adequate evidence to link this accused with the crime. While she was arguing, she has drawn the attention of this Court that the injured police constable was in a private dress so it was not even possible for the accused to identify that person and the Court should held that there was no intention on the part of the accused to assault or to cause the injury to any Government servant or public servant with a view to create obstructions in the performance of his duties. The trial court even if after recording the finding against the accused, ought to have recorded conviction under Section 323 only instead of 332 of IPC. She has also submitted that the present appellant had not inflicted any blow on Shri Krushanakantbhai and the accused was at considerable distance from the other accused who has allegedly inflicted the blow on the old man in the house while attempting the robbery. It is not the matter of dispute that the accused was arrested immediately from the spot of the incident and nothing was recovered from the accused and the accused was chased by a group of persons including the police and was arrested. After appreciating the evidence led by the prosecution Mr. Dutta has emphasized that adequacy of the prosecution evidence is insufficient and in absence of any cogent and convincing evidence, the accused requires to be acquitted.

#. Certain queries were raised to Ms.Dutta and her attention was drawn to some of the part of the evidence recorded by the trial court and the reasoning developed by the trial Judge while linking the accused No.2 with the crimes committed by him in the transaction at the spot of event. The arrest of the accused from the spot of incident is not disputed and the injured police personnel merely was in private dress, the accused should not be put in any advantage because in many department of police, the personnels are not supposed to put on the uniforms. When the police personnel had sustained injury by the accused, he was on duty and had rushed to the spot on call immediately and with the joint efforts of the police and the people residing in the nearby locality, the appellant was arrested. Panch of arrest panchnama of present appellant has supported the case of the prosecution, even otherwise on this point, evidence of police witness is convincing and I have no reasons to discard such evidence of the responsible police personnel in this regard.

#. Ms.Dutta during the course of submission has ultimately submitted that his alternative argument if accepted by this Court, then, the appellant would be satisfied and the crave of the appellant is that the rigorous imprisonment for 5 years imposed by the learned Sessions Judge is harsh punishment looking to the socio-economical background of the accused and the Court should take sympathetic view, in that case, accused would not press this appeal on merits and the Court may even record finding to that effect.

#. A query was raised to learned APP Mr.Mankad appearing for respondent State and after going through the entire record, the learned APP Mr.Mankad submitted that this Court can take sympathetic view in view of the fact that the actual robbery had not been committed and the present appellant was not only the responsible person when the crime was committed. After submission of learned APP Mr.Mankad, Ms.Dutta has fairly conceded that the conviction recorded by the learned Sessions Judge if upheld, accused has no objection. The Court should take sympathetic and liberal view and the substantive sentence imposed to the appellant should be substantially reduced. The appellant accused is in jail since the date of arrest and he has already undergone one and half years of sentence and he was also not enlarged on bail.

#. Looking to the nature of the injuries sustained by one old witnesses Shri Krushnakantbhai Parikh, the time of incident and the manner in which the offence was

committed as well as the weapons which were used by the accused persons, it is not proper to accept the submission advanced by Ms.Dutta that the sentence undergone should be considered as sufficient. The further submission of Ms.Dutta is that the appellant has not participated in inflicting the blow on the head of Krishnkantbhai Parikh or causing any injury to son of Shri Kirshnakantbhai. The appellant was arrested after the alleged assault on the police constable who had tried to chase this appellant. But the gravity of the offence remains as it is. So the rigorous imprisonment if reduced to a period of 3 years and 6 months from 5 years, would meet the ends of justice. As the accused belongs to Vaghari community, undisputedly represents a socially and educationally back class. The social and financial back ground of the accused should not be ignored while inflicting the substantive sentence when such rigorous imprisonment is rigorous. Day to day living condition and concept of "Easy money" also plays some part in such events and the courts have accepted that the process of socialisation of person also plays important role. Simultaneously, the criminal jurisprudence has accepted the principle of reformation and some substantial reduction in the sentence some times give a boost to a person who really wants to improve personally. The Court should not tried to see only that the accused person remains beyond bar for the maximum period or also should not think that one cannot improve during his entire period of life. It is the experience of the society that the criminals are not born and they are the result of the social atmosphere and therefore, this Court is inclined to accept the submission of Mr.Dutta and reduced the substantive sentence from 5 years to 3 and 1/2 (3 years and 6 months) years. The learned APP Mr.Mankad has also submitted that looking to the role played by the present appellant, even according to the case of the prosecution, if the sentence is reduced to 3 and 1/2 years from 5 years, would meet the ends of justice. However, without entering into details and as the conviction is not challenged by the present appellant, the alteration in the order of substantive sentenced to extent of 3 and 1/2 years is passed. In the result, I confirm the judgment and order passed by the learned Additional Sessions Judge, Vadodara. However, it is submitted that the amount of fine has already been paid by the appellant accused so substantive sentence is modified accordingly holding that the conviction recorded by the trial court being legal and proper recording of finding. The appeal is partly allowed and the same is disposed of accordingly. Yadi be sent to the Sessions Court.

Date : 23-9-99 [C.K.Buch, J.]

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